

## **HFS 46.06 Physical plant and equipment.**

### **(1) BUILDING.**

(a) The building in which a center is located shall comply with applicable state and local building codes. The licensee shall maintain a report of inspection of the building, which specifies that the building meets the applicable Wisconsin commercial building codes for use as a group child care center.

**Note:** Inspections can be obtained by a commercial building inspector employed by a municipality certified by the Wisconsin Department of Commerce, a commercial building inspector certified by the Department of Commerce in accordance with chapter Comm 5, "Licenses, Certifications, and Registration," or a Wisconsin architect registered in accordance with chapter A-E 3, Architect Registration, or a Wisconsin engineer registered in accordance with chapter A-E 4, Professional Engineer Registration.

**Note:** Local authorities should be consulted to obtain any required zoning clearances or building permits.

*BUILDING INSPECTIONS: A license may not be issued until the building is in compliance with all applicable commercial building codes as evidenced by a copy of CFS-2344 Building Inspection Report – Child Care Centers or a letter from a registered architect or engineer or from a commercial building inspector certified by the Department of Commerce. The CFS-2344 Building Inspection Report or letter must indicate that all applicable commercial building codes have been met. If any codes listed are designated "not met," all necessary modifications must be completed before the license is issued. The architect or engineer who designed the new child care building may not be the individual who completes the final inspection and signs the final building inspection report. The correct Occupancy category (usually Group E or Group I-4) must be identified on the inspection report. Arrangements for inspections and reports are the responsibility of the applicant/licensee.*

*The applicant should contact the Wisconsin Department of Commerce to determine if plan submittal is necessary prior to requesting an inspection or engaging in any building renovations. The Department of Commerce Plan Review office can be contacted at (608) 266-1018, or [www.commerce.state.wi.us/SB/SB-DivPlanReview.html](http://www.commerce.state.wi.us/SB/SB-DivPlanReview.html)*

*In order to have a building inspected to determine if any modifications are necessary to meet the applicable building codes, the applicant or licensee should contact (there may be a fee involved in obtaining an inspection) one of the following:*

- 1. Certified building inspectors from a city certified by the state to do commercial building inspections (contact your local city building inspection unit to see if the city inspector is certified to do inspections for commercial buildings).*
- 2. A Wisconsin registered architect or engineer (registered in accordance with Wisconsin Administrative rules A-E for Architects and A-E 4 for Engineers).*
- 3. A commercial building inspector certified by the Department of Commerce in accordance with Comm 5, Credentialing Code, to do commercial building inspections. Individuals falling into this category might be self-employed, employed by a municipality that is not on the list of certified cities or employed by a private independent inspection firm. See "Building Inspection Services" in most telephone directory yellow pages.*

*The person requesting an inspection should ask for assistance in determining whether any modifications are necessary to ensure that the building meets the applicable commercial building codes. Group child care centers will typically need to meet the "I-4" building codes. Under certain circumstances, a building may meet the "E" codes.*

*A building inspection is not required for 4 year olds where served in a school that also has a 4 year old kindergarten*

**46.06(1)(a)Note: continued**

*A final building inspection report completed by an architect, engineer or other credentialed individual who is also responsible for the plan design, construction or remodeling of the building will not be accepted. A certified inspector who has not been involved in the building construction or remodeling must do the final building inspection.*

*ISSUING A NEW LICENSE FOR A BUILDING THAT WAS PREVIOUSLY LICENSED AS A CHILD CARE CENTER: If a building was previously licensed as a child care center (and not renovated or used for another purpose in between occupancies by a licensed child care center) a copy of the most recent fire inspection report by the local fire department is all that is required to show proof that the building is in compliance with the applicable building codes. Contact the local fire department for a fire inspection.*

*SUBSEQUENT REINSPECTION: A subsequent re-inspection is required when changes are requested to:*

- 1. Lower age range below 2 ½ years of age.*
- 2. Install a wood burning stove.*
- 3. Use a previously unused part of a building. Only the new section of a building to be used must be inspected for compliance with the current applicable Commercial Building Codes and this rule.*
- 4. Perform remodeling which affects structural strength, fire hazard, internal circulation or exits of existing building or structure.*

*Amendments to the license may not be issued until compliance with COMM re-inspection and local re-inspection, if applicable, is completed.*

*In some communities, a local re-inspection may also be required. Responsibility for arranging this local re-inspection rests with the licensee.*

*If a building is modified in any way that will affect the structural strength, fire hazard, internal circulation or exits of the existing building or structure, building plans must be submitted to the Department of Commerce Plan Approval section prior to the modifications being made. Only plans affecting those areas being altered must be submitted for a plan review.*

*FOR CONSTRUCTION OF NEW BUILDINGS TO BE USED AS CHILD CARE CENTERS, THE FOLLOWING PROCEDURES APPLY: A plans approval application (SB-1 & 8) with instructions for plans approval must be obtained from and submitted to a Department of Commerce plan reviewer with appropriate fees. Certified cities are authorized by COMM to do plans approval for buildings containing 50,000 cubic feet total volume and alterations to buildings containing less than 100,000 cubic feet total volume. See the Department of Commerce website for information about plan reviews <http://www.commerce.state.wi.us/SB/SB-DivPlanReview.html>.*

*The City of Milwaukee is certified for examination and approval of all buildings and structures regardless of size, with the exception of State-owned buildings. If evidence of compliance to building code is by occupancy permit, this means that state and local building codes and zoning requirements have been satisfied.*

*In some communities a local re-inspection or revised occupant permit may be required.*

(b) The department shall be given written notice of proposed construction, remodeling of existing space or change in rooms to be used by children prior to the initiation of the changes.

(c) Space designated for use by children may only be used by children and staff and may not be used for other purposes while the center is open.

**46.06(1)(c) continued**

*SOLE-USE SPACE: The rule is intended to cover a wide variety of situations such as, but not limited to:*

- 1. Space used by children may not be used as access for other places of business or other programs like organizations who may use the same building when the children are present.*
- 2. Parking lots used as outdoor play space may not be used as parking lots with moving vehicles while children are using the space.*
- 3. Space allocated as self-contained classrooms or areas may not be used for meetings or other purposes by outside groups during hours of operation.*
- 4. Bathrooms allocated for children's use during hours of operation may be used by children including school children and center personnel only.*

(d) The inside temperature may not be less than 67°F.

*A minimum temperature of 67° F is determined by a thermostat reading. In rooms without thermostats, 67° F is determined as follows:*

- 1. Room without windows: Temperature taken in center of a room.*
- 2. Room with windows: Temperature taken one foot away from windows and at the center of the room and then averaged.*
- 3. Series of rooms with only one thermostat: The coldest room must comply with the 67° F minimum. Temperatures are to be measured at 24" above the floor level.*
- 4. Infant and Toddler Rooms: Measure 6 inches above the floor.*

(e) If the inside temperature exceeds 80°F., the licensee shall provide for air circulation with fans or by other means.

*Examples of "other means" are air conditioning, fans or other mechanical means.*

**(2) PROTECTIVE MEASURES.**

(a) The indoor and outdoor premises shall be free of hazards.

*TRAMPOLINES: Trampolines on the premises are considered a hazard and may not be used by children in care or be located in an area accessible to children. This includes mini-trampolines and therapeutic trampolines. Inflatable bounce surfaces, (such as bounce houses, moon walks, etc) are considered trampolines.*

*POISONOUS PLANTS: See Appendix AA for a brochure from the UW Hospital Poison Control Center that can be used to help determine which common plants are poisonous. The Poison Control Center's 24-hour emergency phone number is 1-800-222-1222.*

*RADON: Radon testing is not required.*

(b) Steam radiators, fireplaces, wood burning stoves, electric fans, electric outlets, electrical heating units and hot surfaces, such as pipes, shall be protected by screens or guards so that children cannot touch them.

(c) Firearms, ammunition and other potentially dangerous items may not be kept on the premises.

*When group child care for 9 or more children occurs in a residence, an exception may be granted for the storage of guns/rifles and ammunition belonging to the home/residents when alternative protections are provided—i.e., locked storage or area totally inaccessible to children at all times.*

**46.06(2)(d)**

(d) Materials harmful to children, including power tools, flammable or combustible materials, insecticides, matches, drugs and other articles hazardous or poisonous to children shall be in properly marked containers and stored in areas inaccessible to children.

(e) A motor vehicle shall be immediately available at the center at all times in case of an emergency if a public or private rescue or emergency vehicle cannot arrive at the center within 10 minutes of a phone call.

(f) The center shall have a working telephone or access to a working telephone on the premises during hours of operation, with a list of emergency telephone numbers, including telephone numbers for the local rescue squad, fire department, police department or other law enforcement agency, poison control center and emergency medical service posted near each telephone. In this paragraph, "telephone" does not include a pay telephone requiring payment to reach the operator or a telephone in a locked room.

*If a center is located in a community with 911 services, the only phone numbers required to be posted are 911 and poison control. The street address for the center should be posted near the telephone, and it is recommended that the phone number for the local child protective services agency be listed near the phone as well.*

*A working telephone is defined as a phone that is capable of making and receiving phone calls. Cell phones and cordless phones may be used as the only phone in a center if the phone is charged and there are no dead spots in the center that would prohibit calls from being received or made. If a cell phone or cordless phone is used as the only working phone in a center, the emergency numbers need to be conspicuously posted near any phone base or recharging unit and on the phone back. Cell phones must remain at the center when children are present.*

*Centers are required to have a working telephone available. Centers are not required to answer phone calls received during child care hours, but they must specify the procedure for receiving information from parents if they use an answering machine or voice mail service.*

*If the center takes some children on a field trip and uses a cell phone as the "working telephone" required under this rule, the cell phone must remain on the premises of the center. The only time a cell phone may leave the premises of the center is if all children go on the field trip.*

(g) Stairs, walks, ramps and porches shall be maintained in a safe condition and free from the accumulation of water, ice or snow.

(h) Smoking is prohibited on the premises of the center when the children are present.

**Note:** See s. HFS 46.03(25) for the definition of premises.

*If a child care center is located in a building with other occupants, the other occupants or other persons may not smoke in rooms or areas identified as the premises of the child care center.*

*If certain halls or passageways are used in common with other occupants of the building, smoking may not occur in these common use areas.*

*See also HFS 46.08(2)(c) for prohibition against smoking in a vehicle when children are being transported.*

**46.06(2)(i)**

(i) A licensee, employee, volunteer or other individual in contact with children may not consume alcoholic beverages or any non-prescribed controlled substance specified in ch. 961, Stats., on the premises of the center or be under the influence of any alcohol or non-prescribed controlled substance, during the hours of the center's operation.

*CONTROLLED SUBSTANCES: 961.01(4), Wis. Stats., defines "controlled substance" as a drug, substance or immediate precursor in schedules I through V of Subchapter II. Broadly, this covers marijuana, narcotic drugs, opium and opiates, opium poppy and poppy straw. For additional definitions of terms and list of pharmaceuticals which are specifically controlled, see Chapter 961, Wis. Stats.*

(j) Children may not be allowed in an area where power tools are in use.

(k) A hot tub located in a room or area accessible to children shall have a visible, locked, rigid cover or be enclosed by a locked fence at least 4 feet tall. The lock shall be installed so that the lock is inaccessible to children.

(L) If a hot tub is located in a room or area not intended for use by children, access to the room or area shall be controlled through the use of a visibly locked door. The lock shall be installed so that the lock is inaccessible to children.

**(3) EMERGENCIES.** Each center shall have a written plan for responding to a fire, tornado, a tornado warning or other emergency. A center shall do all of the following:

*The center emergency plan should address all the emergencies identified in HFS 46.03(10m) that might occur at the center—e.g., if the center is not located in an area that is subject to floods, an emergency plan does not need to address floods. The plan should include staff member duties and responsibilities. The written plan should address exiting on all levels used by children in care. The plan should also identify items that are recommended to be with the staff—such as attendance list, emergency cards, flashlight, battery-operated radio or cell phone. Information on developing emergency plans could be obtained from local fire departments, local emergency management and the Child Care Information Center at <http://www.dpi.state.wi.us/ccic/> or 1-800-362-7353.*

*The use of a one-exit basement as an emergency shelter during tornadoes and similar emergencies is allowed. Use of a one-exit level is prohibited for any other purpose*

*Licensing staff may ask centers to conduct a fire or tornado drill during a site visit.*

(a) Post the plan and practice implementing it monthly.

*The evacuation diagrams (fire and tornado) shall be posted in every room near the exit door.*

*Evacuation drills must be practiced using the appropriate warning device—i.e., local alarm or interconnected or battery-operated smoke detectors. Other types of manual signaling devices may not be used since children must become accustomed to responding to the sound that would be triggered in a real emergency. Fire drills must be conducted every month. Tornado drills are only required from April through October. The tornado evacuation area should be accessible and free of hazards during tornado season.*

*Children are not required to exit the building completely in inclement weather; however they should be directed to proceed to the nearest exit and staff should review with the children how an actual fire would affect the program.*

**46.06(3)(a) continued**

*Tornadoes can occur at any time of year, but peak months in Wisconsin are during the summer. The National Weather Service continuously broadcasts updated weather warnings and forecasts that can be received by NOAA Weather Radios. Television and radio are also excellent sources of warning information. Contact local fire department or emergency government to determine the safest place in the building. Source: Division of Emergency Government 1- 800-943-0003*

(b) Make sure that all staff members know what their duties are if there is a fire, tornado, tornado warning, or other emergency.

*Staff responsibilities during fire, tornado and other emergencies should be defined in the contingency plans required under HFS 46.04(2)(i)6. Licensing staff may verify that staff know what their duties are in a fire, tornado or other emergency by reviewing the orientation checklist, interviews with staff or having the center conduct a drill while the licensing specialist is present.*

(c) Keep a written record of dates and times of the monthly fire or tornado practice.

**Note:** The licensee may use the Department's form CFS-00543, Group Child Care Center Fire and Safety Checklist, to record dates and times of the monthly fire or tornado practice. Information on how to obtain the form is in Appendix E.

*RECOMMENDED EVACUATION PRACTICES: Children are not to take the time to put on their coats before evacuating a building. During winter temperatures, evacuation practices may stop at the outside exit door of the building so that children are not exposed to inclement temperatures. The recommended goal for exiting time is less than 2 minutes.*

*Both fire and tornado evacuations should be practiced on a varied schedule developed by the center.*

*Fire drills are required every month. Tornado drills are required from April through October.*

**(4) FIRE PROTECTION.**

(a) Each fire extinguisher on the premises of a center shall be operable at all times, inspected once a year by a qualified person and bear a label indicating its present condition and date of the last inspection.

*For questions regarding the type and numbers of fire extinguishers, the center may consult the local fire department.*

*It is the responsibility of the licensee to ensure that the extinguishers are inspected by a commercial fire safety company or fire department and appropriately tagged.*

(b) All staff members shall be instructed in and knowledgeable about the use of the fire extinguishers.

*Note: Priority should be given to immediate evacuation of children. Get out and stay out.*

(c) Each floor used by children shall have at least 2 exits.

(d) Exits and exit passageways shall have a minimum clear width of 3 feet and be unobstructed by furniture or other objects.

(e) An extension cord may not be used permanently with an appliance.

**46.06(4)(e) continued**

*“Extension cord” means a cord set consisting of a length of flexible cord with an attachment plug at one end and a cord connector, which permits the connection of one or more attachment plugs, at the other end. Extension cords shall only be permitted for temporary use with portable appliances, hand tools or fixtures; shall be of a 3-wire grounding type when used in conjunction with devices equipped with 3-prong grounding-type attachment plugs; and shall serve only one portable appliance, hand tool or fixture.*

*“Relocatable power taps” (e.g., surge protectors) means a cord set consisting of an attachment plug and a length of flexible cord terminated in an enclosure in which are mounted one or more receptacles with supplementary overcurrent protection, switches, indicator lights, transient voltage surge suppressors, or electromagnetic interference filters. Relocatable power taps may be used, but they are permitted only with portable electronic equipment such as audio-visual equipment, computers and peripheral equipment.*

*Extension cords and relocatable power taps must be listed by UL or another approved nationally recognized testing agency; shall be protected from physical impact and environmental damage; may not be multiplied or plugged into one another; and may not be attached to structures or placed under doors or floor coverings.*

- (f) No more than 2 electrical appliances may be plugged into any one wall outlet.

*See par. (e) above regarding circuit breaker bars and surge protector power strips.*

- (g) The door to the basement and furnace room shall be closed.

- (h) Areas under stairs may not be used for storage.

*Metal objects such as chairs and certain toys may be stored under stairs. Combustible materials such as paper, cardboard, wood, cloth, rubber and many plastics and hazardous equipment holding or conveying flammable liquids, gases or toxic gases are prohibited under stairs unless the fire inspector provides written authorization to permit storage under stairs.*

- (i) All exit lights shall be lit at all times.

- (j) Fire alarms and smoke detectors shall be maintained in good working order and shall be tested weekly and a record shall be kept of the test results.

**Note:** The licensee may use the Department’s form CFS-00543, Group Child Care Center Fire and Safety Checklist, to document the results of the weekly testing of fire alarms and smoke detectors. Information on how to obtain the form is in Appendix E.

*The center should use the building fire alarm system during fire drills. The fire evacuation drill can be considered one of the weekly tests of the smoke detection system provided the building system is used to sound the alert. The remaining weekly tests of the fire alarm system do not need to be conducted when children are on the premises.*

*ALARM TESTING: Individual units in a multi-station interconnected fire alarm system should be tested on a rotating basis. The requirement for testing applies regardless of a hookup to a local fire station or other monitoring service. Monitored systems are not monitored for working order but are monitored for when they are engaged.*

- (k) Unvented gas, oil or kerosene space heaters are prohibited.

**46.06(4)(k) continued**

*Written approval of the installation of vented gas, oil or kerosene space heaters should be obtained from the local fire department or a building inspector. Written approval from the furnace installer is not acceptable due to the perception of a conflict of interest.*

*Electric space heaters should have an automatic shut off; should not be used near flammable materials; and should be guarded as specified in HFS 46.06(2)(b).*

**(5) SANITATION.**

(a) The premises shall be free from litter, clean and in good repair.

(b) 1. There shall be no flaking or deteriorating paint on exterior or interior surfaces in areas accessible to children.

*Rule does not require that whole room or total outside wall be refinished. The area of flaking or deteriorating paint should be refinished through removing old paint by scraping, sanding or heat and by repainting. Prior to scraping paint from buildings or equipment built prior to 1980, the paint should be tested for lead after consulting your local health department.*

2. No lead-based paint or other toxic finishing material may be used.

*For more information on asbestos or lead regulations, training, certification, work practices, inspections, or other asbestos or lead related questions, please use the following contact information: DIVISION OF PUBLIC HEALTH, BUREAU OF ENVIRONMENTAL & OCCUPATIONAL HEALTH, ASBESTOS AND LEAD UNIT, P.O. BOX 2659, MADISON WI 53701-2659, Phone: (608) 261-6876 Fax: (608) 266-9711, E-Mail: [plicasbestoslead@dhfs.state.wi.us](mailto:plicasbestoslead@dhfs.state.wi.us)*

(c) Garbage containers in the building shall be rigid, covered, watertight and emptied daily or more often as needed. Compactors need not be emptied daily. Garbage and refuse stored out of doors shall be kept in leak-proof containers equipped with tight-fitting covers and shall be disposed of as necessary to prevent decomposition or overflow.

*Garbage refers to food waste. Containers for non-food waste do not require covers.*

*Garbage containers should be rigid and impervious to vermin. Storage of garbage out of doors in plastic or paper bags only is not permitted.*

*Use of spray disinfectants on garbage cans is not recommended due to the potential for irritation to mucous membranes in young children. If spray disinfectants are used, the surface must be wiped to distribute the disinfectant over the entire surface.*

(d) Furnishings, toys, cots and other equipment shall be washed or cleaned when they become soiled. Eating surfaces shall be washed and sanitized before and after each use.

(e) 1. Toilet rooms and fixtures shall be in a sanitary condition at all times.

2. Potty chair receptacles shall be emptied and rinsed and the potty chair and receptacle shall be disinfected immediately after each use with a chlorine bleach solution of one tablespoon to one quart of water, made fresh daily.

*See Appendix O Infection Control Measures*



**46.06(5)(f)**

- (f) Windows and doors that are used for ventilation shall be screened.

*If a window is locked, it is considered incapable of being opened; therefore, it does not need a screen.*

- (g) The premises shall be maintained to prevent the entrance or harborage of vermin.

*Vermin could be any of various insects such as flies, roaches or lice or any of various disease-carrying animals such as rats, birds, bats, mice or weasels. This list is illustrative.*

*The exterior of the building should be free of openings around cables and utilities, under doors or broken windows. The garbage storage area should be free of litter, rubbish piles, burrow holes and droppings and should be rodent proof. Metal containers are recommended.*

*Suspected infestations require the services of a commercial pest control service. Evidence of the provision of a pest control service may be provided by written contract or receipt.*

*An integrated pets management program is recommended to reduce exposure to pesticides.*

**(6) WATER.**

- (a) A safe supply of drinking water shall be available to children at all times from a drinking fountain of the angle jet type or by use of disposable cups. Common use of drinking cups is prohibited.

*The water supply shall be of sufficient volume and height so the person's mouth need not come in contact with the fountain's spout.*

- (b) If the center gets its water from a private well, the following shall apply:

*The licensee is responsible for the annual water test and making the report available. Instructions for taking samples may be obtained from: DIRECTOR, WISCONSIN STATE LABORATORY OF HYGIENE, 465 HENRY MALL, MADISON WI 53706, Phone: (608)262-1293*

1. Water samples from the well shall be tested annually for lead and bacteria by a laboratory certified under ch. HSS 165 and found bacteriologically safe. The laboratory report shall be available to the department upon request.

2. A center serving children under 6 months of age shall have the water tested annually for nitrate levels.

*This refers to private well water only.*

3. If water test results indicate the water is bacteriologically unsafe or has nitrate levels that exceed the recommended limits, the water shall be appropriately treated and re-tested until it is determined to be safe. Bottled water shall be used until the water is determined to be safe.

*NITRATES: Wisconsin standard is 10 milligrams per liter (10 mg) for nitrates. Drinking water with nitrate levels over 10 mg/liter is a health hazard to infants 0-6 months of age and may cause "blue-baby" syndrome. Refer to HFS 45.06(2)(e). If the water continues to test high for nitrate levels then an exception may be granted for permanent use of bottled water for those children under 6 months of age.*

**46.06(6)(b)3. continued**

*Recommended Procedure if the nitrate level is over 10 mgs:*

- *Do not give this water to infants under 6 months of age either directly or in formula.*
- *Do not boil high-nitrate water since boiling increases the nitrate level.*

*Water samples may be tested at private laboratories or the State Lab of Hygiene, 465 Henry Mall, Madison, WI 53706; (608) 262-1293. Refer to [www.dnr.state.wi.us](http://www.dnr.state.wi.us) for list of certified labs.*

*If the test indicates that the water is bacteriologically unsafe, the licensee shall contact the local public health department or the DNR to come up with a suitable plan of correction. Use of bottled water is a temporary solution to a well that tests bacteriologically unsafe. Wells must be treated and re-tested until they are determined to be safe.*

**Note:** Centers using a private well that serves at least 25 of the same people over 6 months of the year are considered to have a non-transient non community water system (NTNC) and must be in compliance with Chapter NR 809, Safe Drinking Water Act Standards. Contact the nearest Department of Natural Resources from the list at: [www.dnr.state.wi.us/org/caer/cs/ServiceCenter/SSbyRegion.html](http://www.dnr.state.wi.us/org/caer/cs/ServiceCenter/SSbyRegion.html)

**(7) INDOOR SPACE.**

(a) The space used by children shall be no less than 35 square feet of usable floor space for each child, exclusive of passageways, kitchens, bathrooms, coat storage areas, offices, storage areas, isolation quarters, staff room, furnace room, parts of rooms occupied by stationary equipment, and areas not at all times available to children, including areas used exclusively for large muscle activity, napping or eating.

*USABLE SPACE: Self-contained rooms or areas [see HFS 46.03(28)] are used to determine licensed maximum capacity. Other space in the center, as specified in the rule, is not used to determine licensed capacity; e.g., isolation quarters, staff room, furnace room, parts of rooms occupied by stationary equipment and areas not at all times available to children including areas used exclusively for large muscle activity, napping or eating.*

*Available floor space is calculated by multiplying the width by the length of a self-contained room or area to determine the maximum number of children who may use the space at any one time. The maximum number may also be affected by the applicable group size.*

*Calculations to determine available indoor space for capacity: To determine the licensable capacity based on indoor square footage, measurements of the spaces used by the children must be taken. These measurements should be calculated using a length times width (L x W) formula. Inches will be converted to a decimal number for ease of multiplication. If the space to be measured does not easily adapt to L x W measurement, the space should be broken down into more easily defined squares and rectangles. Triangle-shaped spaces can be calculated using a 1/2L x W formula.*

*Using this formula, each room will be measured with a maximum room capacity determined. If the calculations result in a number with a decimal of .5 or higher, the number of children to be accommodated in that space should be rounded up 1 additional child. To obtain the maximum allowable children in the center, based on indoor space only, the individual room capacities are added together. Actual capacity may be different from the maximum capacity taking into account numbers 1 – 6 below.*

*Documentation of licensable capacity for the facility file and the licensee should be in the form of a letter outlining the measurements taken, deductions made and calculations done or a diagram of the indoor space including measurements, deductions and calculations.*

**46.06(7)(a) continued**

*The licensable capacity of a center is based on a number of determinations. The actual licensed capacity of a center will take all determinations into account. Following are the items that must be considered when determining the maximum capacity of a center:*

- 1. Amount of square footage used by the children*
- 2. Number of toilets and washbasins available to children [See HFS 46.06(10)(a)]*
- 3. Staff-to-child ratio and maximum group size [See HFS 46.05(4)(a) & (b)]*
- 4. Amount of equipment present [See HFS 46.07(3)(c)]*
- 5. Amount of cots, mats or sleeping bags available, if applicable [See HFS 46.07(4)(c)]*
- 6. Space occupied by all cribs including play pens, portable cribs or pack and plays regardless of whether the cribs are taken down to make additional room when not in use [See HFS 46.09(1)(h)]*
- 7. Square footage of outdoor play space unless an exemption has been requested and approval given [See HFS 46.06(11)(b)]*
- 8. Storage space for children's clothing and personal belongings so that each child in the licensed capacity has a storage space [See HFS 46.06(8)(e)]*
- 9. The qualification of the directors [See HFS 46.05(1)(c)]*

*Information on the available space should be reviewed by the licensing specialist periodically to ensure that the space available to children has not changed due to the addition or removal of deductible equipment/furnishings from a room or area. Any changes that would reduce a center's capacity based on a recalculation of available space should be discussed with the licensing chief.*

*In measuring the space, the area under the stairs of the room should not be counted.*

*LOFTS: Effective August 1, 1997, based on current interpretation from the Department of Commerce, lofts that are connected or attached to the building may not be counted as additional play space for determination of licensed capacity unless the loft has been inspected and approved by a private or certified building inspector under COM 21.19 Floor Design.*

*Lofts that are free standing and not connected or attached to the building are considered to be play equipment and may not be counted as additional usable space when determining the capacity of a center.*

*Centers where loft space was included in determining licensed capacity prior to August 1, 1997, will be unaffected by this change in usable space policy.*

*PASSAGEWAYS AND HALLS: In passageways and halls that exceed the minimum required width for a passageway or hall (3 feet or larger depending on number of occupants in building), the additional space may not be counted as space to increase the licensed capacity. See definitions for "self-contained room or area" HFS 46.03(28) and "group" HFS 46.03(12).*

*Licensees are responsible for reporting changes in room usage and the removal and/or addition of equipment to rooms so that the maximum capacity can be periodically evaluated by the licensing specialist.*

- (b) There shall be additional storage space for cots, bedding, supplies and equipment not in use.

**(8) FURNISHINGS.**

- (a) Furnishings shall be durable and safe, with no sharp, rough, loose or pointed edges.

**46.06(8)(b)**

(b) Tables and seating shall be scaled to the proper height and size for the children's comfort and reach.

*RECOMMENDATIONS FOR CHAIR SIZE:*

*To decide if chairs are appropriate for use with a table, the seat on the chair should be 10" below the table top.*

*Tables and chairs scaled for adults may not be used in classrooms.*

*LUNCH ROOM SEATING:*

*When lunches are served in a separate room used expressly for serving meals, the size of chairs and tables is frequently not at the proper height and size for children's reach. An exception may be granted to the height of the chairs and table.*

*Where only snacks are served, table and chair space for each child is not required if snacks are served in shifts or cafeteria style.*

(c)1. Except as provided in subd. 2., in a center where meals are served, seating shall be at least equal to the licensed capacity of the center, excluding infants, so that the children can be served at the same time, and there shall be space at a table for each child.

2. In a center where meals are served in a central lunchroom, seating and tablespace shall be at least equal to the number of children to be served in a shift.

(d) Shelves shall be provided for equipment and supplies in rooms used by children. Equipment and supplies shall be arranged in an orderly fashion so that children may select, use and replace items.

*Stable shelving should be supplied in a quantity sufficient to accommodate the amount of play equipment needed to meet the rule for each self-contained classroom/area and group. Toy boxes are not acceptable and, according to the U.S. Consumer Products Commission, they present a hazard if they have a hinged cover.*

(e) There shall be sufficient storage space for clothing and personal belongings to accommodate the clothing and personal belongings of as many children as are in the licensed capacity of the center. For children 2 years of age and older, the space for outer garment storage shall be at child level.

*A wide variety of storage space is acceptable—hooks, hangers, lockers, etc. Storage space for personal belongings may be provided through shoeboxes, chip containers, cubbies, plastic containers, laundry baskets, etc.*

(f) A safe, washable cot, bed, two-inch thick mat or sleeping bag shall be provided for each child 12 months old or older who naps or sleeps.

(g) A safe, washable crib or playpen shall be provided for use of each child less than 12 months old who naps or sleeps. A crib or playpen shall be washed and disinfected between changes in occupancy.

**Note:** See Appendix D for information on safe cribs and playpens.

**(9) KITCHENS.**

(a) *Equipment and utensils .*

**46.06(9)(a)1.**

1. When meals are prepared or heated on the premises, the kitchen shall be equipped with a microwave or stove with an oven, a refrigerator, a sink and utensils that are necessary to prepare and serve meals. The sink shall be used exclusively for food preparation and dishwashing.

2. All equipment and utensils shall have smooth, hard surfaces, be easily cleanable, in good repair, durable, non-toxic and free of cracks, seams, chips and roughened areas, and shall be maintained in a clean and sanitary condition.

3. Food preparation tables shall be durable, and surfaces shall be smooth, non-absorbent and easily cleanable.

4. After cleaning, utensils shall be stored in a clean, dry place and protected from contamination.

5. Single-service utensils shall be non-toxic, stored in a clean, dry place, kept covered, and may not be reused.

*Single service refers to cups, containers, lids or closures, plates, knives, forks, spoons, etc. intended by the manufacturer for one-time, one-person use and then to be discarded.*

6. Infant bottles and nipples may not be reused without first being cleaned and sanitized.

*(b) Dishwashing procedures.*

1. All kitchen utensils and food contact surfaces used for preparation, storage or serving of food shall be thoroughly cleaned and sanitized after each use.

2. All utensils and dishes shall be scraped, sorted and prewashed under running water.

3. For manual washing of dishes and utensils, a 3-step procedure shall be used:

a. Wash in water between 110° and 125°F., using an effective soap or detergent.

b. Rinse by immersing dishes and utensils in clean, hot water to remove soap or detergent.

c. Sanitize by submerging dishes and utensils for at least 2 minutes in a solution of 1½ teaspoons of bleach per gallon of water or another solution of a sanitizer approved by the department.

*Quaternary ammonia products are approved by the department as an approved sanitizer. The label must contain an EPA seal of approval (EPA reg. number). You will not see QUATERNARY ammonia listed on the label. What you will see is the name of the quaternary ammonia compound itself.*

- Benzalkonium chloride
- Dimethyl benzyl ammonium chloride
- Dodecyl dimethyl ammonium chloride

*Any of the above compounds are acceptable. A list of other products approved by the department for use in sanitizing eating utensils, and dishes is available from the Division of Public Health, 1 West Wilson St., PO Box 2659, Madison, WI 53701-2659.*

*See HFS 46.07(6)(h)2. and 4. for information on disinfecting surfaces contaminated by vomitus, urine, feces, blood or other bodily fluids. See HFS 46.09(4)(a)3. for information on disinfecting diaper changing surfaces. See HFS 46.07(6)(h)4.*

**46.06(9)(b)3.c. continued**

*Products such as Clorox cleanup used on tabletops must be used two times—the first to clean the tabletop and then a new wipe to sanitize the surface.*

*See Appendix O for sanitizer/disinfectant explanations.*

4. For mechanical washing of dishes and utensils, one of the following shall apply, as appropriate:

a. Wash at 130° to 150°F. for at least 20 seconds, using an effective cleaning agent, and rinse and sanitize at 180°F. for 10 seconds or more, using an automatic rinse injector.

b. For washing in hometype dishwashers with a temperature setting of between 130° and 150°F., dishes and utensils shall be washed and rinsed in the dishwasher and sanitized by submerging dishes and utensils for at least 2 minutes in a solution of 1½ teaspoons of bleach per gallon of water or another solution of a sanitizer approved by the department.

*Domestic, hometype dishwashers may be used provided the sanitizing step is added after dishes have been removed from the dishwasher.*

*Rinse water must be no less than 180° F to be effective against bacteria. Most, if not all, hometype dishwashers can not deliver water at this temperature. Some hometype dishwashers utilize a Sanicycle or hot water booster to increase the rinse water temperature. Sanicycles may not substitute for the requirement for sanitizing dishes unless the center can document that the hot water (Sanicycle) booster with the domestic dishwasher can raise the temperature of the rinse water to a temperature of no less than 180° F.*

*Heat tape may be used to ensure that the rinse water reaches the required temperatures. Centers who wish to use heat tape must request an exception to this rule and must include as part of the exception request the process for using the heat tape and how often the water will be tested.*

*If a center cannot document that the rinse water reaches the required temperature, the rule that requires immersing dishes in a sanitizing solution must be met.*

*Quaternary ammonia compounds are an acceptable sanitizer alternative if the product has the EPA approval.*

*You will not see QUATERNARY ammonia listed on the label. What you will see is the name of the quaternary ammonia compound itself.*

- Benzalkonium chloride
- Dimethyl benzyl ammonium chloride
- Dodecyl dimethyl ammonium chloride

*See HFS 46.06.07(6)(h)2 and 4 for information on disinfecting surfaces contaminated by vomitus, urine, feces, blood or other bodily fluids. See HFS 46.09(4)(a)3 for information on disinfecting diaper changing surfaces. See HFS 46.07(3)(a) and 46.09(2)(h) on keeping toys and other equipment safe by disinfecting them periodically.*

*See Appendix U for list of DPH approved sanitizers*

c. For washing in commercial spray-type dishwashing machines using a chemical sanitizer in the final rinse, the dishes and utensils shall be washed, rinsed, and sanitized in the dishwasher according to the machine manufacturer's operating instructions.

**46.06(9)(b)5.**

5. Readily-visible temperature gauges shall be located in the wash compartment of all mechanical dishwashers and in the rinse water line of spray-type mechanical dishwashers or in the rinse tank of an immersion-type dishwasher.

*Gauges must be visible from the outside of the dishwasher. Water temperatures must reach at least 130° F to 150° F during the wash cycle and 180° F during the rinse cycle.*

6. All dishes and utensils shall be air-dried in racks or baskets or on drain boards.

**Note:** A list of approved sanitizers is available from the Bureau of Environmental Health, Division of Public Health, P.O. Box 309, Madison, Wisconsin 53701.

*See Appendix U for a list of approved sanitizers.*

*(c) Food sources.*

1. Food shall be clean, wholesome, free from spoilage, free from adulteration or misbranding and safe for human consumption. Meat, poultry, fish, molluscan shellfish, eggs and dairy products shall be from an inspected source.

*Fresh produce may be purchased from farmers markets. Home-raised eggs are acceptable by exception with parental and food program permission.*

2. Only milk and milk products which are pasteurized and meet the Grade A milk standards of the Wisconsin department of agriculture, trade, and consumer protection may be served or used.

3. No food prepared for meals may be served unless it is prepared on the premises, prepared in a central kitchen operated by the day care center and inspected and approved by the licensing representative or in another location licensed under ch. HFS 196.

3m. Meals shall be prepared on the premises, in a central kitchen operated by the child care center or in another location that has been inspected by a representative of a state agency.

**Note:** Chapter HFS 196 of the administrative rules address restaurants and other public eating establishments. Chapter ATCP 75 of the administrative rules address retail food establishments.

*The Division of Public Health conducts inspections of public school kitchens for the Department of Public Instruction. Private school kitchens may not be inspected by another state agency unless that kitchen holds a restaurant license. Restaurants, catering agencies, hospitals and nursing homes and other residential agencies licensed by the department have their kitchens inspected by the licensing agency. A copy of any applicable license and the most recent inspection report is required. If a catering service is used, the meals must be prepared on the premises of the licensed catering agency.*

*Food that is transported from one location to another must be transported in ways that will protect the food from spoilage or contamination. Food transportation containers must be capable of maintaining hot food at 150 degrees F or more and cold food at 40 degrees F or less. All food transported must be covered securely to prevent spilling and the vehicle must be clean.*

4. Food in dented, bulging or leaking cans, or cans without labels, may not be used.

5. Hermetically sealed, non-acid or low-acid food which has been processed in a place other than a commercial food processing establishment may not be used.

**46.06(9)(c)5. continued**

*"Hermetically sealed" is sealed by pressure as to keep air or gas from getting in or out and relates to canned food. Bacteria are the most serious foe to combat in canning because they are more difficult to kill by heat than either molds or yeast.*

*Acid in canned food is expressed as PH value. Foods having a PH of 4.5 or lower are called high-acid foods and those with a value of 4.6 or higher are termed low-acid foods.*

*Since few bacteria thrive in acids, their destruction is less difficult in fruits than in vegetables (with the exception of tomatoes).*

***Low-acid vegetables***

*Asparagus  
Beans-snap or shelled  
Beets  
Carrots  
Corn  
Potatoes  
Pumpkin  
Squash  
Sweet potatoes*

***High-acid fruits &-vegetables***

*Apples  
Apricots  
Berries  
Cherries  
Grapefruit  
Peaches  
Pineapple  
Rhubarb  
Tomatoes*

*Source: Centers for Disease Control (CDC)*

*Botulism is a deadly poison caused by a toxin from the growth of spores (seeds) of the bacteria, clostridium botulism. These spores will produce a deadly toxin in low-acid foods in the absence of air (oxygen) inside a sealed jar. Therefore, the spores must be destroyed by processing under pressure at 240 degrees F. The length of time has been determined by scientists for each individual food.*

**(d) Food storage.**

1. Foods shall be stored at temperatures which protect against spoilage. The following measures shall be taken to prevent spoilage:

a. Perishable and potentially hazardous food which includes all custard-filled and cream-filled pastries, milk and milk products, meat, fish, shellfish, gravy, poultry stuffing and sauces, dressings, salads containing meat, fish, eggs, milk or milk products, and any other food or food product likely to spoil quickly if not kept at the proper temperature shall be continuously maintained at 40°F. or below or 150°F. or above, as appropriate, except during necessary periods of preparation and service.

b. Each refrigeration unit shall be maintained at 40°F. or lower and each freezing unit shall be maintained at 0°F. or lower.

c. Each cold storage facility shall be equipped with a clearly visible accurate thermometer.

*For example: a refrigerator that includes a freezer would require two thermometers—one for the refrigerator portion and one for the freezer portion.*

d. Food shall be covered while refrigerated, except when being cooled.

2. Foods not requiring refrigeration shall be stored in clean, dry, ventilated and lighted storerooms or areas which shall be protected from contamination by sewage, wastewater backflow, condensation, leakage or vermin. In addition:



**46.06(9)(d)2.a.**

a. Dry foods, such as flour, sugar, cereals and beans shall be stored in metal, glass or food-grade plastic containers with tight-fitting covers and shall be labeled. In this paragraph, “food grade plastic” means any plastic material used in the manufacture of dishes or utensils which has been found not harmful to human health by the national sanitation foundation.

*Dry foods are to be stored in their original sealed containers or in washable containers with tight covers.*

*It is acceptable to store bread and buns in their original containers.*

*Reusing milk jugs for food or beverage storage is not acceptable.*

*SINGLE-USE PLASTIC CONTAINERS: A single-use plastic container may not be reused to store food if it originally contained nonfood products. A single-use plastic container used by the processor to package food may be reused for food storage if container is smooth, easily cleanable and durable (e.g., Cool whip and deli containers). The FDA has determined that potential migration of substances from single-use plastic food containers into other foods does not preclude reuse of these containers since there is little or no public danger from substances migrating out of single-use plastic containers into food (FDA Interpretation dated 8/23/85).*

*PLASTIC BAGS: Single-use food storage plastic bags are acceptable. Bags with a zip type closure are recommended.*

b. Foods stored in the basement shall be stored at least 8 inches above the floor, and food stored in other areas shall be stored high enough above the floor to provide for air circulation and to facilitate cleaning.

*(e) Cleaning aids.*

1. Poisonous and toxic materials, including cleaning supplies, bleaches and insecticides, shall be labeled and stored in cabinets used for no other purpose and shall be inaccessible to children.

2. Cleaning aids such as mops, broom and buckets shall be clean and shall be stored outside of food preparation or food storage areas.

*(f) Food handling.*

1. Raw fruits and vegetables shall be washed before being served or cooked.

2. Food returned from individual plates or from dining tables shall be discarded.

3. Leftover prepared food which has not been served shall be dated, refrigerated promptly and used within 36 hours, or frozen immediately for later use.

4. Food delivery vehicles shall be equipped with clean containers or cabinets to store food while in transit. Containers for cold food shall be capable of maintaining the temperature at or below 40°F. and containers for hot food shall be capable of maintaining the temperature at or above 150°F.

5. Potentially hazardous frozen foods shall be thawed in the refrigerator, under cold running water or on the defrost setting in a microwave oven. No potentially hazardous frozen food may be thawed by leaving it at room temperature.

**46.06(9)(f)5. continued**

*Commercially-prepared ready-to-serve opened food items can be retained up to seven days after they are opened when they are properly stored or refrigerated.*

*The definition of potentially hazardous frozen food includes all of the following: custard-filled and cream-filled pastries; milk and milk products; meat; fish; shellfish; gravy; poultry stuffing and sauces; dressings; salads containing meat, fish, eggs, milk or milk products; and any other food or food product likely to spoil quickly if not kept at the proper temperature.*

(g) Food service personnel.

1. Personnel who help prepare meals shall:

a. Be at least 18 years of age.

b. Wear clean clothing and effective hair restraints such as hair nets or caps.

*An effective hair restraint is a cap or hairnet that covers all hair in front and three-fourths of hair in back with the intent that food preparers do not have to touch their hair.*

c. Wash their hands with soap and warm running water before starting work, before and after handling food, and after using the toilet. Hands shall be dried with single use towels.

*Individual cloth towels can only be used once and then must be laundered.*

2. No one with an open or infected wound or sore may work in the food preparation area unless the wound or sore is covered and, if it is on a hand, a nonporous glove is worn on that hand.

**(10) WASHROOM AND TOILET FACILITIES.**

(a) A group child care center shall provide at least the number of washbasins and toilets with plumbing indicated in Table 46.06. Urinals may be substituted for up to 1/3 of the total required toilets.

*The maximum recommended warm water temperature for preschool children is 100° - 105° F.*

**TABLE 46.06**  
**MINIMUM NUMBER OF WASHBASINS AND TOILETS REQUIRED IN**  
**GROUP CHILD CARE CENTERS**

<b>Maximum Number of Children for Which the Center is Licensed</b>	<b>Number of Toilets</b>	<b>Number of Washbasins</b>
9 or 10	1	1
11 to 25	2	1
26 to 40	3	2
41 to 55	4	2
56 to 70	5	3

(b) When a center is licensed for more than 70 children, one additional toilet shall be provided for each additional 15 children or fraction thereof and washbasins shall be provided in the ratio of one for every 2 additional toilets and urinals or fraction thereof.

(c) Children under the age of 30 months need not be included when determining the required fixtures under par. (a). However, in all cases, at least one toilet and one washbasin shall be provided.

**46.06(10)(d)**

(d) If potty chairs are used for children under 30 months of age, the potty chairs shall be provided in a ratio of one for every 4 children or fraction thereof.

(e) Steps or blocks shall be provided if the washbasins and toilets are not proportioned to the size of the children.

(f) Soap, toilet paper, disposable paper towels and a wastepaper container shall be provided and accessible to children using the facilities.

*Liquid soap is recommended. Hand sanitizers do not replace soap and running water. See HFS 46.07(6)(i)3. regarding availability of individual hand towels.*

(g) Toilet room door locks shall be openable from the outside and the opening device shall be readily accessible to the staff.

*Duct tape cannot be used to keep a lock open.*

*The phrase "toilet room door locks" refers to the outside exit toilet room door. If stalls are constructed according to code, the stall doors should have crawl space underneath.*

**(11) OUTDOOR PLAY SPACE.**

(a) *Requirement for outdoor play space.* A center shall have outdoor play space if children are present for more than 3 hours a day or if outdoor play is included in the center program.

*Part-time preschools, nursery schools and school-age programs with sessions scheduled to last at least 3 hours must meet the requirements in this section. Three hours is determined by hours of operation in the terms of the license. Three hours means three consecutive hours.*

*When a program is exempt from meeting the requirement for outdoor space by virtue of 3 or less hours of operation with the same children in care, but chooses to provide an outdoor play period, rules regarding outdoor space apply. The other option is not to provide an outdoor play experience.*

*When a child care center is located in a school, the outdoor play space and equipment for children under age 5 must meet the requirement of HFS 46.06(11) and 46.07(3)(a).*

(b) *Required features of outdoor play space.* Except when an exemption is requested and is approved by the department under par. (c), a center shall comply with all of the following requirements for outdoor play space:

1. The outdoor play space shall be on the premises of the center.
2. There shall be at least 75 square feet of outdoor play space for each child 2 years of age or older using the space at a given time.
3. There shall be at least 35 square feet of outdoor play space for each child under 2 years of age using the space at a given time except as provided in subd. 4.
4. The total outdoor play space of a center shall accommodate not less than 1/3 of the number of children for which the center is licensed or shall be a minimum of 750 square feet, whichever is greater. The number of children under one year of age need not be included for purposes of computing the minimum required outdoor play space if the center provides spaces in wheeled vehicles such as strollers and wagons equal to the number of children under one year of age.

**46.06(11)(b)5.**

5. An energy-absorbing surface, such as loose sand, pea gravel or pine or bark mulch, in a depth of at least 9 inches is required under climbing equipment, swings and slides and in a fall zone of 4 feet beyond and whenever play equipment is 4 feet or more in height.

*ENERGY-ABSORBING SURFACES: An energy-absorbing surface of at least 9" in depth is required underneath and within a 4' fall zone around each piece of playground equipment if the distance between the designated play space on each piece of playground equipment and the surface below is 4' or more. If swings are present on the playground, the highest point in the trajectory of an occupied swing shall be considered when determining whether an energy-absorbing surface is required. Rubberized mulch may be used as a surfacing material if the depth is consistent with the manufacturer's requirements depending on the height of the playground equipment.*

*Information on safety specifications for playground equipment can be found in the standards of the American Society for Testing and Materials (ASTM F1487-95). Safety information for public playgrounds is also available from the Consumer Products Safety Commission (Handbook for Public Playground Safety Pub. No. 325). Copies of both of these publications are available from the Consumer Products Safety Commission 1-800-638-2772 or [www.cpsc.gov](http://www.cpsc.gov).*

*Close supervision is critical when children are using playground equipment because children may climb to areas other than the designated play space on each piece of playground equipment.*

*UNITARY MATERIALS: Unitary materials as energy-absorbing material under playground equipment are generally rubber mats or a combination of rubber-like materials held in place by a binder that may be poured in place at the playground site and cures to form a unitary energy absorbing surface. If a center wishes to install a unitary surface beneath playground equipment and in a 4-foot fall zone around equipment, an exception may be granted for poured surfaces if the following requirements are met:*

- 1. All materials must be installed according to the manufacturer's instructions.*
- 2. Manufacturer's test results must indicate the maximum height from which a child can fall and still be protected. The G-max rating indicated should be under 200 and the HIC should be under 1000 to protect children from critical injury resulting from a fall.*
- 3. The test results must reflect the platform height for the piece of equipment. For example, if the platform height on a piece of playground equipment is 6', the ratings must be for 6'. If this material is used under swings, the highest point of the swing's trajectory is the measuring point for the rating.*
- 4. The manufacturer's test results should indicate that the tests were conducted under three temperature variations, and all temperature ratings must meet the criteria in # 2.*
  - Ambient: 73 degrees F (23 degrees C)*
  - Cold: 30 degrees F (-1 degrees C)*
  - Hot: 120 degrees F (49 degrees C)*

6. The outdoor play space shall be well-drained and shall be free of hazards such as uncovered wells, cisterns and unused appliances. Structures such as playground equipment, railings, decks and porches accessible to children that have been constructed with CCA treated lumber shall be sealed with an exterior oil based sealant or stain.

*"Free of hazards" is a discretionary rule to cover a wide variety of hazardous conditions which may occur in an outdoor play area including, but not limited to, basement stairwells not protected by a fence or gate, lawn sprinkler valve boxes recessed several inches below ground with no cover, broken glass or cans in outdoor play area, holes, fences, enclosures with sharp edges or points near adjacent climbing equipment, etc.*

**46.06(11)(b)6. continued**

*Roof-top playgrounds must always be inspected and approved prior to use by a Department of Commerce inspector or designated certified inspector.*

*Trampolines may not be in areas accessible to children on the premises.*

*It is recommended that providers keep a receipt, a label or a copy of a label which clearly indicates the sealant product used is oil based and the date the product was purchased.*

*Wood treated with the oil-based products creosote and pentachlorophenol (PCP) can also be toxic. These chemicals are typically found in railroad ties and utility poles. Structures made with these materials cannot be adequately sealed and will be considered a hazard. Children should not be permitted to come in contact with wood treated with either of these products.*

7. The boundaries of the outdoor play space shall be defined in such a way as to protect the children. A permanent enclosure not less than 4 feet high shall be provided where there are hazards nearby, including but not limited to traffic or bodies of water, which present a threat to the safety of children in care.

*When there are bodies of water such as a water garden, fishpond, etc. on the premises and a 4-foot high fence is not provided, an exception must be requested. The exception request will need to include a detailed plan for the protection of the children. Some of the items to be considered when writing or evaluating the exception request include evaluation of the following items:*

- 1. The ages of the children as specified in the terms of the license.*
- 2. The location of the water garden, fish pond, etc. in relation to the usual play area of the children.*
- 3. The location of the exits from the building and the play area in relation to the water garden, fish pond, etc.*
- 4. Any other circumstances which may affect the safety of the children.*
- 5. Compliance history of the center with respect to supervision of the children and previous enforcement actions.*

*The exception request must be approved by the chief of the regional licensing office and shall be periodically reviewed and re-approved by the licensing specialist and chief to ensure that the circumstances of the exception remain essentially the same. Failure to comply with the conditions of the exception could result in withdrawal of the exception and/or other enforcement actions such as forfeiture or revocation of the license could be initiated.*

*See HFS 46.06(12)(a)—swimming pools, HFS 46.06(12)(b)—wading pools, and HFS 46.06(2)(k) and (L)—hot tubs and HFS 46.03(30)—supervision of children.*

*The determination of hazard and the requirement for an enclosure is at the discretion of the department in relation to hazards in the area.*

8. Concrete and asphalt are prohibited under climbing equipment, swings and slides.

*The Consumer Products Safety Commission publication entitled Handbook for Public Playground Safety indicates that asphalt and concrete are unsuitable for use under and around playground equipment of any height unless they are required as a base for a shock-absorbing unitary material such as a poured surface or rubber mat. This publication (Number 325) is available at [www.cpsc.org](http://www.cpsc.org).*

9. An energy-absorbing surface, such as loose sand, pea gravel or pine or bark mulch, in a depth of at least 9 inches is required under climbing equipment, swings and slides and in a fall zone of 4 feet beyond and whenever play equipment is 4 feet or more in height.

**46.06(11)(c)**

(c) Exemption for off-premises play space.

1. In this paragraph, “main thoroughfare” means a heavily traveled street or road used by vehicles as a principal route of travel.

1m. If a center has no outdoor play space available on the premises of the center, the licensee may request an exemption from the requirements under par. (b) for a center’s outdoor play space.

*If on-site play space is available, it must be used. Exemptions will not be issued to those programs that have available on-site play space that is suitable for children’s use.*

*If any condition in the approved plan change after the plan has been approved and put into use, the licensing specialist must request that a new plan be submitted. If an exemption to use off-premises play space is revoked, the center must either have on-premises play space that meets the requirements of the rule or they must reduce the hours of operation so that no child is in care for longer than 3 hours.*

2. A request for an exemption under subd. 1m. shall be in writing and shall be accompanied by a plan for outdoor play space which does all of the following:

a. Identifies and describes the location to be used, the travel distance from the center to that location and the means of transporting the children to that location.

b. Provides for adequate supervision of the children as specified in Table 46.05-D.

c. Provides for daily vigorous exercise in the out-of-doors for the children.

d. Describes the arrangements to meet the toileting and diapering needs of the children.

e. Affirms the center’s compliance with the requirements included in subds. 3. to 6.

**Note:** Send the request for an exemption and the off-premises outdoor play space plan to the appropriate regional office in Appendix A.

*Send a request for an exemption and the off-premises outdoor play space plan to the licensing representative at the appropriate field office of the Department’s Division of Children and Family Services. See Appendix A for addresses of the field offices.*

3. The off-premises outdoor play space shall be free of hazards such as bodies of water, railroad tracks, unfenced in-ground swimming pools, heavily wooded areas and nearby highways and main thoroughfares.

4. There shall be at least 75 square feet of outdoor play space for each child 2 years of age or older using the space at a given time, and at least 35 square feet of outdoor play space for each child under 2 years of age using the space at a given time.

5. No climbing equipment, swing or slide in the play space may have concrete or asphalt under it.

6. When the off-premises outdoor play space is reached by walking, the center shall transport children under 3 years of age in wheeled vehicles, such as strollers or wagons, with a seating capacity equal to the number of children under 3 years of age to be transported.

**46.06(11)(c)7.**

7. A center's plan for use of an off-premises outdoor play space is subject to approval by the department. Within 30 days after receipt of a plan and request for an exemption from the requirements of par. (b), the department shall either approve the plan and grant the exemption or not approve the plan and therefore deny the request for exemption. The department shall notify the center in writing of its decision and, if it does not grant an exemption, shall state its reasons for not granting the exemption.

8. If any circumstance described in an approved plan for use of off-premises outdoor play space changes or if any condition for plan approval is not met or is no longer met, the department may withdraw its approval of the plan and cancel the exemption. A center with an approved plan shall immediately report to the department's licensing representative any significant change in any circumstance described in the plan.

**(12) SWIMMING AREAS.**

(a) Above ground and in ground swimming pools on the premises may not be used by children in care and shall be enclosed by a 6 foot fences with a self-closing, self-latching door. Spaces between the vertical posts of the fence shall be 4 inches or less.

*To adequately protect children when a pool is on the child care center premises, the following steps must be taken.*

*If access to the pool is through a gate, the gate must be closed and visibly locked during the licensed hours of the center.*

*If the pool is accessible through a door from the child care building, that door must be closed with a visible lock during the licensed hours of the center, and an alarm must be in place at the door to signal that someone has entered the pool area. Above-ground and in-ground swimming pools on the premises may not be used by children in care and shall be enclosed by a 6-foot fence with a self-closing, self-latching door. Spaces between the vertical posts of the fence shall be 4 inches or less.*

*Locks shall be located so that the locks cannot be opened by the children.*

*Floating pool alarm devices are not acceptable in lieu of the above protections, because they only work AFTER a disturbance to the pool's surface.*

*If the pool is located inside the fenced area of the outdoor play space, it must be enclosed as described above unless an exception under HFS 46.06(12)(a) has been requested and approved. The free-standing wall of an above-ground pool may not serve as an enclosure unless it is 6 feet in height and not climbable. If a ladder is present, the ladder must be removed or raised up so that it is inaccessible to the children.*

*The area around the pool must be kept free of toys or equipment that would allow a child to climb or otherwise gain access to the pool area.*

*A stipulation shall be signed and posted specifying the protections that will always be in place during hours of operation.*

*There may be some programs such as YMCAs that have a swimming pool on the premises of the center. The pool is designed primarily for community or member use. These programs may also have a swimming component as part of the child care program. An exception for the use of these pools may be granted on a case-by-case basis with the approval of the licensing chief/supervisor.*

**46.06(12)(a) continued**

*Criteria for considering an exception request to allow the use of these pools must include assurances that all the items under HFS 46.06(12)(c) will be met and that an appropriate supervision plan is in place.*

(b) A wading pool may be used if the water is changed and the pool is disinfected daily.

*See HFS 46.03(35) for the definition of a wading pool.*

*The provider must be able to demonstrate that the pool can be easily dumped, appropriately cleaned and disinfected daily.*

*The American Academy of Pediatrics, in the book Caring for Our Children – National Health and Safety Performance Standards for Out of Home Care, states that the use of wading pools for children is not recommended. Standing water is a breeding source of bacteria and insects that carry disease. Instead, sprinklers, hoses or water tables may be used as an alternative for water play.*

(c) A swimming pool or beach that is not located on the center premises may be used by children, if all the following conditions are met.

1. The construction and operation of the pool shall meet the requirements of chs. Comm 90 and HFS 172 for public swimming pools. A beach shall comply with any applicable local ordinance.

2. Certified lifesaving personnel shall be on duty.

*Center may provide a certified lifeguard. The lifeguard cannot be counted in staff-to-child ratios.*

3. While children are in the water of a pool or beach other than a wading pool, staff-to-child ratios for child care workers who can swim shall be:

*Swimming ratios do not apply to organized swim lessons, but regular staff-to-child ratios should be maintained in or near the pool area.*

*Swimming ratios apply to public wading pools.*

a. For children under 3 years of age: 1:1.

b. For children 3 years of age: 1:4.

c. For children 4 and 5 years of age: 1:6.

d. For children 6 years of age and older: 1:12.

4. When a mixed age group of children are swimming, the staff-to-child ratio shall be adjusted based on the number of children in the water and each child's age.

**Note:** A worksheet to help calculate the staff to child ratio for mixed aged groupings during swimming is available from the department. Requests may be made to the licensing representative or regional licensing office listed in Appendix A.

5. A child shall be restricted to the area of the pool or beach that is within the child's swimming ability.

*The parents may determine the child's swimming ability*